

**UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION**

**Public Utilities Commission of
The State of California**

v.

Docket No. RP00-241-000

**El Paso Natural Gas Company,
El Paso Merchant Energy-Gas, L.P.
El Paso Merchant Energy Company**

**ORDER OF CHIEF JUDGE
CONFIRMING DISCOVERY RULINGS
AND DENYING MOTION TO QUASH SUBPOENA**

(Issued April 19, 2001)

At a telephone discovery conference held at 11:30 a.m., on Tuesday, April 17, 2001, the Chief Judge heard argument and ruled on the following:

- (1) The disputed discovery requests of Southern California Edison Company (Edison) to Southern California Gas Company (SoCalGas) first set of data requests dated April 5, 2001 deferred by the Chief Judge at the April 13, 2001 discovery conference;
- (2) An oral motion to compel the Public Utilities Commission of the State of California (CPUC) to respond to El Paso Merchant Energy, L. P. S.'s (El Paso Merchant) second set of data requests; and
- (3) Sempra Energy Trading Corporation's (Sempra) motion to quash the Subpoena issued by the Chief Judge in response to the motion of Edison for issuance of subpoenas filed on April 10, 2001.

(1) Deferred Rulings on Edison's Disputed Discovery Requests

Question 1: Please provide SoCalGas' detailed daily operating records for the time period

April 1, 1998 to the present, consistent with the format SoCalGas' response to SCE Data Request No. 21 in CPUC Docket No. RP98-01-011. Please ensure that this information is supplied in electronic form on a 3.5" diskette.

Ruling: SoCalGas was directed to make a search to determine if the information sought exists, and if so, make it available.

Question 4: For each day from January 1, 2000 to the present, please provide core burn, core sales to third parties (*i.e.*, not deliveries to core residential and commercial customers, but sales to non-core customers, marketers, etc.), core flowing supplies (from interstate and CA production), core net storage withdrawals, and core imbalance. We would expect daily core burn plus core sales to equal the sum of core flowing supplies plus core net storage withdrawals plus core imbalance. If this is not the case, please provide the equation and the missing data needed to derive a daily core supply and disposition balance from January 1, 2000 to the present.

Ruling: The information requested is relevant. SoCalGas will provide the information requested for the time period the material is available.

Question 5: For each day from April 1, 1997 to the present, please provide the net injections/(withdrawals) from storage for:

- a. SoCalGas' total system,
- b. the core customers,
- c. others (*i.e.*, the non-core customers, etc.), and
- d. balancing purposes. If balancing was included with core volumes through some date after April 1, 1997, please provide that date and break out the balancing data subsequent to that date.

Ruling: The information is relevant. SoCalGas will make the material available if it exists.

Question 7: For each day from January 1, 2000 to the present, please provide the net injections/(withdrawals) from storage for electric generation customers in the aggregate. Please also provide the total amount of working gas in storage inventory for/by electric generation customers as of January 1, 2000.

Ruling: SoCalGas will make a best effort to determine whether the material requested is available and supply it.

Question 9: For each day from January 1, 2000 to the present, please provide the net injections/(withdrawals) from storage operated by SoCalGas for Sempra Energy Trading and its unregulated affiliates. Please also provide Sempra Energy Trading's working gas in storage as of January 1, 2000.

Ruling: SoCalGas will provide the material requested if available.

Question 11: For all sales (*i.e.*, not deliveries to core customers, but to third parties Such as non-core customers, market ers, etc.) By the Gas Acquisition Depart ment (or the success or entity designa ted to purchas e gas for the core), please provide a listing of sales contrac ts in existen ce betwee n

January
1, 2000
and the
present
. For
each
sales
contrac
t,
please
include
the
date
the
contrac
t was
entered
into,
the
volume
(MMcf
/d),
start
date for
delivery
of gas,
end
date for
delivery
of gas,
price,
location
where
gas is
delivere
d to the
purchas
er, and
identity
of the
purchas

er.

Ruling: The information is highly relevant. SoCalGas will provide the information if available.

Question 13: Please provide a listing of all supply purchases made by SoCalGas'

Acquisition
Department
(or the
successor
entity
designated to
purchase gas
for the
core) at
the
California
Border
(defined as
Topock,
Needles,
Ehrenberg,
Blythe,
Daggett,
, and
Kern
River
Station)
from
January
1, 2000
to the

present
. For
each
supply
contract,
please
include
the
date
the
contract
was
entered
into,
the
volume
(MMcf
/d),
start
date for
delivery
of gas,
end
date for
delivery
of gas,
price,
location
where
gas is
delivered
to
SoCal
Gas. If
the
supply
was
purchased
for a
particular

ar
purpos
e (e.g.,
supplyi
ng the
core,
system
balanci
ng, or
supplyi
ng a
third
party
sale)
please
so
specify.
Please
identify
those
transact
ions
where
the
supply
was
purchas
ed from
El Paso
Mercha
nt
Energy
Compa
ny,
Inc., or
its
affiliate
s.

Ruling: The Chief Judge ruled that the material sought is highly relevant. SoCalGas will provide the information if available.

With regard to the ruling on Request Nos. 2, 3, 4, 5, 8, 11, and 13, the Chief Judge placed the following restrictions:

- This material will be made available to one counsel for each party and to not more than two of that party's experts. The material will be provided on a need-to-know basis.
- Any party receiving this material will not make copies of it.
- Any party receiving this material will return it to SoCalGas at the conclusion of the study.
- Any notes made concerning this material will not be copied and will be returned to SoCalGas at the conclusion of the study.

(2) El Paso Merchant's Motion to Compel CPUC Responses

The CPUC objected to providing many of El Paso Merchant's responses on the grounds that the requests are unduly burdensome, vague, and over broad and that El Paso Merchant could itself go through the CPUC's central files and search for much of the information sought. El Paso Merchant argued that the CPUC is the complainant in this case; that the documents being sought are CPUC generated documents; that the CPUC has not indicated what portions of the questions are vague and on what grounds.

The Chief Judge ruled that any document or data relied upon by the CPUC or to be relied upon by the CPUC in this docket will be provided on discovery and any CPUC-generated documents that are relevant and material to the limited question in this case. In other words, anything the CPUC has done in connection with this case is discoverable. This includes any analysis done for the case, even though the CPUC may intend to use such analysis in a larger analysis in the future.

(3) Sempra's Motion to Quash Subpoena

Sempra argued that the subpoena is extremely expansive and intrusive; that it goes to the very core of its natural gas business in California; that Edison was selectively targeted; that Edison is attempting to engage in a fishing expedition; that Sempra is not a party to this proceeding; and that the information sought is competitively sensitive. Edison responded that Sempra is a major player in the California market; that Edison has requested subpoenas of other non-parties in this case; and that Edison will try to work through any problems Sempra may have concerning the subpoena so that only absolutely essential information will be provided.

The Chief Judge denied the Sempra's motion to quash on the grounds that the material requested is very relevant. The Chief Judge found that the material is necessary in order to look at as

big a portion of the market as possible so that this Commission can decide whether market power has been exercised here to control prices. The Chief Judge further found that Sempira's non-party status was not persuasive because in any civil case parties must rely upon non-parties for portions of their evidence. The Chief Judge pointed out that Sempira can raise specific objections to instructions, definitions, and requests if they arise.

The Chief Judge placed the following restrictions on the material to be provided by Sempira:

- This material will be made available to one counsel for each party and to not more than two of that party's experts. The material will be provided on a need-to-know basis.
- Any party receiving this material will not make copies of it.
- Any party receiving this material will return it to Sempira at the conclusion of the study.
- Any notes made concerning this material will not be copied and will be returned to Sempira at the conclusion of the study.

Curtis L. Wagner, Jr.
Chief Administrative Law Judge